

BARDEX CORPORATION PURCHASE ORDER TERMS & CONDITIONS

Article 1 Entire Agreement This Purchase Order, including any attachments, shall be the entire agreement between Bardex (Buyer) and Seller. Acknowledgment of this Purchase Order, shipment of any goods or rendering of any services pursuant to this Purchase Order shall be deemed an acceptance of these terms and conditions. No modification of this Purchase Order shall be binding unless agreed to by Buyer in writing and specifically labeled as a modification. These terms and conditions supersede any submitted by Seller in any proposal, acknowledgment, invoices or any other communication from Seller unless specifically agreed to by Buyer in writing.

Article 2 Terms of Payment Unless noted otherwise on the face of this Purchase Order, payment for goods delivered or services performed shall be paid within forty-five (45) days after the goods are delivered or services are completed.

Article 3 Changes Buyer reserves the right at any time to change this Purchase Order. No changes to this Purchase Order shall be made unless Buyer issues a Purchase Order revision. Within ten (10) days of Buyer's request for a change, Seller shall submit a proposal to Buyer, which includes any increases or decreases in Seller's cost or changes in the delivery or work schedule necessitated by the change. Buyer shall, within ten (10) days of receipt of the proposal, either (i) accept the proposal, in which event Buyer shall issue a Purchase Order revision directing Seller to perform the change or (ii) advise Seller not to perform the change in which event Seller shall proceed with the original work.

Article 4 Termination Buyer may, at any time, terminate this Purchase Order, in whole or in part, for convenience, by written notice to Seller. In such case, Buyer's liability shall be limited to payment of the amount for (i) goods completed and not paid for up to and including the date of termination and (ii) actual costs of work-in-process to the extent such costs are reasonable and properly allocable to the Purchase Order less the costs of any such goods or materials used or sold by Seller with Buyer's consent. All amounts shall be substantiated with proof satisfactory to Buyer, and Seller will render no further work. Such payment shall constitute a full and complete discharge of Buyer's obligations, and Buyer shall not be responsible for claims by Seller or its subcontractors for any other cost or anticipated profit. In no event shall Buyer's liability exceed the purchase price of this Purchase Order. Nothing in this provision shall limit Buyer's rights to terminate this Purchase Order for default of Seller. Buyer may, at its option, terminate this Purchase Order without liability to Seller if Seller: (a) repudiates or breaches any of the terms of this Purchase Order, including Seller's warranties; (b) fails to deliver goods or perform the services as specified by this Purchase Order; or (c) fails to make progress so as to endanger timely and proper completion of such goods or services; and does not correct such failure or breach within ten (10) days after receipt of written notice from Buyer specifying such failure or breach; and upon such termination, Buyer shall have all rights by reason of Seller's default as provided by law. If it is found that Seller was not in default, the rights and obligations of the parties shall be the same as if notice of termination had not been issued pursuant to this clause.

Article 5 Assignment Seller may not assign, transfer, or subcontract this Purchase Order or any right or obligation hereunder without Buyer's written consent. Any purported assignment, transfer, or subcontract shall be void and ineffective. All work performed by Seller's subcontractors, at any tier, shall be deemed work performed by Seller.

Article 6 Delivery Time is of the essence. Seller shall furnish sufficient labor and management forces, plant, and equipment and shall work such hours (including night shift, overtime, weekend and holiday work) as may be required to assure timely delivery. Regardless of delivery or performance in installments, Seller's obligation is not severable. Buyer need not accept shipments sent C.O.D. without its consent and may return them at Seller's risk.

Article 7 Excusable Delay Neither party shall be held responsible for any delay or failure in performance of any part of this Purchase Order to the extent such delay or failure is caused by fires, floods, strikes, lockouts, epidemics, accidents, shortages, act of any governmental authority, or other causes beyond the reasonable control and without the fault or negligence of the delayed or non-performing party or its subcontractors. If any such conditions occur, the party delayed or unable to perform shall give immediate notice to the other party stating the nature of the condition and any action being taken to avoid or minimize its effect. The time for delivery specified herein shall be extended during the continuance of such conditions. If the delay by Seller is more than thirty (30) days, Buyer may terminate this Purchase Order without liability to Seller by written notice to Seller given before receipt of notice from Seller that the delay has ceased.

Article 8 Taxes If the goods furnished under this Purchase Order are for resale, Buyer will pay any sales or use taxes imposed on such goods after delivery. Seller will pay all other taxes imposed before delivery to the destination point, including property taxes imposed on goods for which title has passed to Buyer. All sales, use, excise or similar taxes to be paid by Buyer shall be itemized separately in this Purchase Order and on invoices.

Article 9 Applicable Laws; Venue Seller warrants and agrees that it has complied and will comply with all applicable Federal, state and local laws, codes, and regulations. The laws of the State of California, USA, excluding conflict of law provisions shall govern the construction, interpretation and performance of this Purchase Order and all transactions under it. Any legal action or proceeding with respect to this Purchase Order or arising out of this Purchase Order, shall be brought and maintained exclusively in the appropriate court of the State of California in and for the County of Santa Barbara or if there is exclusive Federal jurisdiction, in the United States District Court for the Central District of California, Los Angeles, California. Seller and Buyer hereby each accept for itself and in respect of its property, generally and unconditionally, the personal and subject matter jurisdiction of said Courts. Seller and Buyer each hereby irrevocably waive any objection that it may now or hereafter have to the laying of venue in any action or such proceeding brought arising out of or in connection with this Purchase Order in such Courts that any action or such proceeding brought in such Court has been brought in an inconvenient forum. In the event any action is instituted to enforce or interpret this Purchase Order or arising out of this Purchase Order, the prevailing party shall be entitled to all costs and legal expenses including, without limitation, reasonable attorneys' fees, expert witness fees, accountants' fees and Court costs.

Article 10 Patent Indemnity and Use of Products (a) Seller shall defend any suit or proceeding brought against Buyer, its successors and assigns, and indemnify Buyer from and against any losses, damages, liabilities, fines, penalties, and expenses (including reasonable attorney's fees), based on any claim that any goods or any component part delivered or furnished hereunder infringes on the intellectual property right of any third party, including any patent, copyright, trademark, or trade secret right (excepting infringement or the like necessarily resulting from adherence to specifications furnished by Buyer). (b) Seller hereby grants to Buyer the right and license without further consideration to utilize any of Seller's patents, inventions or information, embodied in, which form a part of or involves the use of the goods and/or services which are the subject matter of this Purchase Order. Buyer agrees to notify Seller in writing of any such claim and to provide such assistance, at Seller's expense, as may be reasonably required in defending the suit or proceeding. If the goods or any component part furnished hereunder are held to infringe and their use is enjoined, Buyer reserves its rights at law and at its option may return the infringing goods to Seller at Seller's expense and Seller promptly shall refund the purchase price to Buyer.

Article 11 Packaging, Packing Lists and Bill of Lading All items purchased under this Purchase Order must be identified independently of the packing slip by: (a) the vendor part number is marked on the part; (b) the vendor part number is on a tag attached to the part; or (c) the part is in a separate bag or box with the vendor part number on the wrapping. Buyer will not be able to complete receipt of the parts until this data is correctly provided. Buyer, in its sole discretion, may return the items for marking or return the invoice for resubmission after the items are properly and correctly identified. Note: the packing slip is insufficient verification of vendor part number and will not be accepted for more than an indication of what may be included in the shipment. Seller shall provide, at no cost to Buyer, proper packaging, loading and tie-down to prevent damage during transportation. Seller shall bill all returnable containers on a separate memo invoice; return transportation charges will be collect and for Seller's account. Seller shall enclose a packing slip with each shipment containing the Buyer's order number, Seller's name, packing slip number, piece number and other shipping papers and when Seller and shipper are not the same, the names of both shall be shown thereon. Seller shall enclose a packing slip with each shipment indicating the contents of each container, excluding prices. Buyer's weight and/or count will be accepted as final and conclusive on all shipments not accompanied by such packing list.

Article 12 Inspection All goods furnished hereunder will be subject to Buyer's final inspection and approval within a reasonable time after delivery irrespective of payment date. Buyer may reject goods not in accordance with the instructions, specifications, drawings, data, or Seller's express or implied warranties, ("Non-Conforming Goods") or may accept some and reject other Non-Conforming Goods, at its option. Buyer may return rejected goods to Seller at Seller's expense and Buyer shall have no further obligation for such goods or Buyer may retain rejected goods and Seller shall pay Buyer its damages due to them. Payment for any article shall not be deemed acceptance and in no event shall Buyer incur any liability to pay for rejected goods.

Buyer shall have a reasonable time (not less than ten (10) days from receipt) to submit claims of count, weight, quantity, loss or damage to delivered goods. Buyer will calculate damages on claims and deduct the amount from Seller's invoice. If invoice was previously paid, Seller will reimburse the amount of damages to Buyer.

Seller shall assume responsibility for and will pay any and all loss, cost, damage, or expense, including attorney fees, and cost or replacement incurred by Buyer attributed to Buyer's rejection of Non-Conforming Goods or to Seller's untimely delivery.

Article 13 Indemnity Seller agrees to defend, indemnify and save the Buyer harmless from and against all liabilities, claims or demands whether in tort or in contract for injuries or damages to any person or property arising out of Seller's acts or omissions in the performance of this Purchase Order. In no event shall Buyer be liable for any incidental, special, consequential or punitive damages. Seller shall maintain and require its subcontractors to maintain during the term of this Purchase Order such general liability insurance, including products liability, completed operations, contractors liability and protective liability, automobile liability insurance (including non-owned automobile liability), fire insurance, worker's compensation and employer liability insurance as will adequately protect Buyer against such damage, liabilities, claims, losses, demands and expenses (including attorney's fees). Seller agrees to submit to Buyer certificates of insurance evidencing such insurance coverage when requested by Buyer.

Article 14 Warranties By accepting this Purchase Order, Seller warrants that the goods and services furnished will be free from defects in materials and workmanship, merchantable and in full conformity with Buyer's specifications, drawings and data, and Seller's descriptions, promises or samples, and that such goods will be fit for the Buyer's intended use, provided Seller has reason to know of such use, and that Seller will convey good title to the goods, free and clear from all liens, claims and encumbrances. Without Buyer's written consent, no materials may be substituted in lieu of those specified. All warranties shall run to Buyer, its successors, assigns, and customers and to the users of its products. Seller agrees that this warranty shall survive acceptance of the goods, and is in addition to any warranties of additional scope given to Buyer by Seller and those implied by law. No implied warranties by the Seller are excluded. Seller will defend, indemnify and hold harmless Buyer and its customers from and against any and all costs, expenses (including reasonable attorney's fees), damages, losses, liabilities, penalties and judgments attributable to all goods delivered hereunder that fail to conform to the warranty set forth herein or which is otherwise implied by law.

Seller, without cost to Buyer, shall promptly do all things necessary to correct any breach of the above warranties in a manner satisfactory to Buyer. If Seller is unable or refuses to repair or replace as Buyer may require, Buyer may contract or otherwise repair or replace such defective goods and back-charge Seller for the excess cost. Buyer's remedies are cumulative and in addition to all remedies available to Buyer at law or in equity.

Article 15 Title and Risk of Loss The risk of loss of all goods ordered hereunder and identified as goods to which this Purchase Order refers, shall be borne by Seller until such goods are delivered to and received by the Buyer at the place specified in the Purchase Order. Notwithstanding restrictive legends to the contrary, title to plans, drawings and specifications for goods shall be vested and remain with Buyer and may be used by Buyer for any purpose.

Title shall pass to Buyer upon Buyer's acceptance of goods at Buyer's location. If Buyer makes progress payments, title to the goods shall be transferred to Buyer as payments are made, and in the same proportions as the cumulative payments bear to the Purchase Order price. Seller shall also identify such goods as the property of Buyer, unless Buyer waives such identification.

Article 16 Non-Disclosure If Buyer discloses or grants Seller access to any research, development, technical, economic or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Seller agrees, as a condition of receiving such information or "know-how," that Seller will not use or disclose any such information to any other person at any time, except as may be necessary in the performance of this Purchase Order and only to those under a similar non-disclosure obligation, without Buyer's written consent. Seller shall use such information only to perform this Purchase Order.

No dies, fixtures, tools, patterns, or drawings supplied to Seller by, or otherwise belonging to, Buyer or its customer shall be used in the production, manufacture, or design of any goods other than those called for by this Purchase Order, except with the written consent of Buyer, nor shall goods furnished to Buyer's patterns, specifications, drawings, dies, or tools be furnished or quoted to any other person or concern.

Article 17 Waiver Buyer's failure to insist on Seller's strict performance of the terms and conditions of this Purchase Order at any time shall not be construed as a waiver by Buyer to performance in the future.